

Hearing Date and Time: November 15, 2018 at 10:00 am (Eastern)

Objection Date and Time: November 8, 2018 at 4:00 pm (Eastern)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
	:	
SEARS HOLDING CORPORATION, <i>et al.</i> , ¹	:	Case No. 18-23538 (RDD)
	:	
Debtors.	:	(Jointly Administered)
-----	X	

**LIMITED OBJECTION OF CROSS COUNTRY HOME
SERVICES, INC TO DEBTORS' MOTION FOR AUTHORITY TO
(A) OBTAIN POSTPETITION FINANCING, (B) USE CASH COLLATERAL,
(C) GRANT CERTAIN PROTECTIONS TO PREPETITION SECURED PARTIES,
AND (D) SCHEDULE SECOND INTERIM HEARING AND FINAL HEARING**

Cross Country Home Services, Inc. ("CCHS"), a party in interest in the above-captioned

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

chapter 11 cases, by and through its undersigned attorneys, submits this limited objection (this “Limited Objection”) to the *Debtors’ Motion for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties, and (D) Schedule Second Interim Hearing and Final Hearing* [Docket No. 7] (the “DIP Motion”).² In support of this Limited Objection, CCHS respectfully states as follows:

Background

1. CCHS is a provider of home warranty, repair, and maintenance services, which has partnered with Sears Holdings Management Corporation (“Sears Holdings”) and Sears, Roebuck and Co. (“Sears Roebuck”) to offer a Total Home Management Program (the “THM Program”) to retail customers. Under the THM Program, CCHS, Sears Holdings, Sears Roebuck, and their respective affiliates provide home warranty plans, service line repair plans, home maintenance, and home assistance membership programs, together with Shop Your Way points, preventative maintenance visits, discounted non-warranty repairs, and discounted oil changes.

2. The THM Program has been a successful and productive partnership and generates significant revenues for CCHS, Sears Holdings, and Sears Roebuck. Under the THM Program, CCHS (i) receives fees from customers in the THM Program and pays a portion of such fees to Sears as compensation for originating customers for the THM Program and for providing certain benefits and other services under the THM Program, (ii) compensates Sears Roebuck for repair and maintenance services for the home warranty plans provided under the THM Program, and (iii) performs credit card merchant services for Sears Holdings in relation to service call charges.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the DIP Motion.

3. The agreements governing the THM Program (the “THM Program Documents”) include the following:

- a. Amended and Restated Total Home Management Program Agreement, dated as of November 1, 2017 (as amended from time to time), between (x) CCHS, on behalf of itself and as agent for HomeSure Services, Inc., HomeSure of America, Inc., HomeSure Protection of California, Inc., and HomeSure of Virginia, Inc. and (y) Sears Holdings, on behalf of itself and each of its affiliates;
- b. Home Services Agreement, dated as of February 1, 2016 (as amended from time to time), between CCHS and its subsidiaries and Sears Roebuck; and
- c. Administration Agreement, dated as of April 28, 2014, between CCHS and Sears Holdings.

Limited Objection

4. CCHS has recoupment and setoff rights under the THM Program Documents and has not waived or consented to the priming of such rights in connection with the proposed DIP ABL Facility and Junior DIP Financing (collectively, the “DIP Facilities”). In the DIP Motion, the Debtors represent that neither DIP Facility requires non-consensual priming liens. See DIP Motion ¶ 14-15. Further, at the first day hearing, this Court granted interim approval for the DIP ABL Facility based on “consensual priming only.” Oct. 15, 2018 Hr’g Tr. 48:24-25. Accordingly, CCHS’s recoupment and setoff rights under the THM Program Documents may not be impaired or otherwise affected by the DIP Facilities.

5. CCHS has obtained the agreement of the Debtors and the lenders under the DIP ABL Facility to include the following clarifying language in the final order approving the DIP ABL Facility (the “Final ABL DIP Order”) and requests that the same language be included in the interim and final orders approving the Junior DIP Financing (collectively, the “Junior DIP Orders”):

“Except as specifically set forth in paragraph [40(d)] with respect to the Prepetition ABL Obligations, notwithstanding anything to the contrary in this Final Order, nothing herein is intended to, and shall not: (a) waive, modify, prejudice, limit or otherwise impair the right of any party to exercise rights of setoff or recoupment, if any, under the Bankruptcy Code (including, without limitation, pursuant to section 553 of the Bankruptcy Code) or any other applicable non-bankruptcy law, subject, however, to section 546(c) of the Bankruptcy Code, (b) provide any party with any greater or lesser setoff or recoupment rights, if any, than they would have under the Bankruptcy Code or any other applicable non-bankruptcy law, or eliminate the need to seek relief from the automatic stay where required before exercising any such rights, or (c) waive, modify, prejudice, limit or otherwise impair any defenses or objections of the DIP Agents or any of the other DIP Credit Parties, the Prepetition ABL Agents or any of the other Prepetition ABL Credit Parties, the Debtors and any other party in interest to such setoff and recoupment rights or the exercise thereof.”

WHEREFORE, CCHS respectfully requests that the Court (a) include the language requested in this Limited Objection in the Final ABL DIP Order and the Junior DIP Orders and (b) grant such other and further relief as is just, proper, and equitable.

Dated: November 8, 2018
Boston, Massachusetts

/s/ James M. Wilton
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